



Association  
of Electric  
Cooperatives

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Publishers of COOPERATIVE LIVING

**VIA ELECTRONIC FILING**

*March 12, 2015*

The Honorable Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

**Re: *Maritime Communications/Land Mobile*  
EB Docket No. 11-71; WT Docket No. 13-85**

Dear Mr. Chairman:

The Virginia, Maryland & Delaware Association of Electric Cooperatives (the "Association") would appreciate an opportunity to briefly comment on the issues in this docket, specifically, the Federal Communication Commission's ("Commission") contention that electric utilities and other similarly-situated entities are not "critical infrastructure industry" or "CII" entities and therefore are not eligible for partial assignment of spectrum. Additionally and if necessary, the Association moves the Commission to accept these comments out-of-time.

Founded in 1944, the Association is a not-for-profit association owned by and representing the thirteen electric distribution cooperatives in the Commonwealth of Virginia as well as one electric distribution cooperative in each of Maryland and Delaware (the "Member Systems" or the "Cooperatives"). The Association's Member Systems serve over 1.5 million residents of the mid-Atlantic—who are the Cooperatives' members and owners. The Association includes in its membership some of the nation's largest electric cooperatives: among them Northern Virginia Electric Cooperative and Rappahannock Electric Cooperative. The Cooperatives provide electricity to farms and businesses throughout their designated territories, with over 90 percent of the meters serving residential member-consumers, with an average of 7 consumers per mile of line. The Cooperatives are crucial providers of essential services in rural communities. To deny them access to spectrum as CII entities is nonsensical; Cooperative systems are used regularly for essential communications infrastructure for emergency response operations and service restoration following natural and man-made disasters. In the procedural orders in this docket, the Commission recognizes,

... that important public benefits stem from the operation of, for example, SCADA systems by oil and gas companies and smart grid systems by electric cooperatives and other utilities. Although the CII Companies' proposals to use the spectrum licenses for SCADA, smart grid and similar applications would be beneficial to the public, unlike PTC,

those other services are not dedicated to communications to prevent human injury and property damage, but are also used for day-to-day facilities management and other purposes that primarily serve the business needs of the licensee.<sup>1</sup>

The “business needs” of an electric cooperative are not separate from public safety—they are one and the same. An electric cooperative has no “business need” apart from the provision of an essential service—electricity—to its member-owners on a not-for-profit basis. The service provided by an electric cooperative is used by police and fire stations, public safety answering points, hospitals, emergency operations centers, and it is not an understatement to say that electric service is a foundational part of all other emergency services. Electrification is an integral part of public safety, not simply a “business,” but the lifeblood of rural economics and those communities’ ways of life.

The Association respectfully submits this letter to request a reconsideration of the Federal Communications Commission’s decision noted in its Memorandum Opinion and Order (“MO&O”)<sup>2</sup> in the above-captioned proceeding. The fundamental issue is that even though the Commission recognizes that utilities are critical infrastructure industry (“CII”) entities, it refuses to acknowledge that utilities use spectrum to transmit critical communications for public safety purposes. As an example, one of the Association’s Member Systems owned and operated an FCC-licensed 150 MHz radio system prior to 2008. This system became obsolete because of an FCC mandate for narrow banding in the 150 MHz bands.

The Member System then worked with the National Rural Telecommunications Cooperative (“NRTC”), and identified a 220 MHz radio system that would meet the propagation criteria for operation in its mountainous service territory. The purchase of the 220 MHz radio system resulting in an investment in excess of \$1.2 million, including not only the frequencies required by also hardware such as: nineteen (19) communication sites, nine (9) base station radios, and over 80 portable and 150 mobile radios.

Subsequently, the Member System worked with NRTC and eventually entered into an interim lease agreement and purchase agreement (for the necessary 220 MHz spectrum) with Maritime Communications Land Mobile, LLC (“MCLM”). The Cooperative in question now owns and utilizes its 220 MHz radio system daily, and it also serves as the region’s primary and essential communications infrastructure for emergency response and electric service restoration.

As the Cooperative was installing its newly acquired 220 MHz system, it learned that the Commission had brought into question the facts purported by MCLM about itself when it purchased the 220 MHz spectrum at auction from the FCC. It also learned that MCLM had filed for bankruptcy. The United States Bankruptcy Court Northern District of Mississippi, in Case No.

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<sup>1</sup> Memorandum Opinion and Order (“MO&O”), FCC 14-113 (rel. Sept. 11, 2014) at ¶ 36.

<sup>2</sup> MO&O, FCC 14-113 (rel. Sept. 11, 2014).

11-13463- DWH, Debtor, Maritime Communications/Land Mobile, LLC, Chapter 11, approved the interim spectrum lease and purchase agreements subject to FCC approval.

The Commission has erred in not recognizing that utilities, including and especially those defined by DHS and the President as providing an essential service, are CII entities with a public safety role. That role in emergencies hinges on its ability to communicate with field crews via radio systems. Finally, the Association's Member Systems stand to lose significant investments, including the \$1.2 million mentioned above—not a small sum for a rural electric cooperative—should the Commission not reverse its earlier decision in the MO&O.

The Association requests that the Commission reconsider and reverse its decision in the MO&O, and ultimately extend an exempt status, similar to that afforded the Southern California Regional Rail Authority in the MO&O.

Very truly yours,



Samuel R. Brumberg



**CERTIFICATE OF SERVICE**

I, Samuel R. Brumberg, hereby certify that on this 12th day of March, 2015, a copy of the foregoing letter was filed with the Commission and served on the parties listed below via United States Mail, first class postage prepaid.

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